

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 15, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, aluminum, ammonium sulfate plants, cement industry, coal, copper, electric power plants, glass and glass products, grains, intergovernmental relations, iron, lead, metals, motor vehicles, nitric acid plants, paper and paper products industry, petroleum, phosphate, sewage disposal, steel, sulfuric acid plants, waste treatment and disposal, zinc.

(Secs. 111 and 301(a) of the Clean Act (42 U.S.C. 7411 and 7601(a))).

Dated: November 9, 1984.

William D. Ruckelshaus,
Administrator.

PART 60—[AMENDED]

Part 60 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart S—Standards of Performance for Primary Aluminum Reduction Plants

Section 60.195 is amended by revising paragraph (b)(2) to read as follows:

§60.195 Test methods and procedures.

(b) * * *

(2) Alternative testing requirements are established for Alumax of South Carolina's Mt. Holly Plant in Mt. Holly, South Carolina: The anode bake plant and primary control system are to be tested once a year rather than once a month.

[FR Doc. 84-30117 Filed 11-15-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 704

(OPTS-80011C; FRL 2471-5)

Reporting and Recordkeeping Requirements; Small Manufacturer Exemption Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule sets forth general exemption standards for small

manufacturers of chemical substances under section 8(a) of the Toxic Substances Control Act. Manufacturers who qualify as "small" under these standards will be exempt from most subsequent section 8(a) reporting and recordkeeping rules. The exemption standards have been designed to reduce the paperwork burden on small chemical manufacturers, while ensuring that EPA will receive a sufficient amount of production, use, exposure, and other information to support assessment of chemical risks.

DATES: This regulation shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on November 30, 1984. This regulation becomes effective on December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460; Toll free: (800-424-9065); In Washington, D.C.: (554-1404); Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Legal Authority

Section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a), authorizes the Administrator of the Environmental Protection Agency to establish, by rule, reporting and recordkeeping requirements for chemical manufacturers and processors. TSCA includes the importation of chemicals in its definition of "manufacture." TSCA section 8(a)(2) lists some of the types of data which the Administrator may require to be kept or reported, including information concerning the identity, production volume, and exposure potential of chemicals manufactured or processed.

By the terms of the statute, small manufacturers and processors are usually exempt from section 8(a) reporting and recordkeeping requirements. TSCA section 8(a)(3)(B) states that the Administrator shall by rule "prescribe standards for determining the manufacturers and processors which qualify as small manufacturers and processors * * *."

Under the authority of section 8(a)(3)(A)(ii), the Administrator need not apply this exemption with regard to a chemical substance or mixture that is subject to:

1. A proposed or promulgated rule under TSCA section 4 (testing requirement), section 5(b)(4) (a list of chemicals which may present an

unreasonable risk), or section 6 (control actions), or

2. An order in effect under section 5(e) (new chemical information), or

3. Relief granted as a result of civil action brought under section 5 or 7.

B. The Proposed Rule

Initially, EPA took a case-by-case approach to the definition of small manufacturers and processors; the Agency established individual exemption standards for each section 8(a) rule. Subsequently, EPA decided to initiate the development of general exemption standards for small manufacturers. These standards were proposed in the Federal Register of June 23, 1982 (47 FR 27206). The proposed exemption standards applied to all chemical manufacturers that could be subject to section 8(a) reporting requirements. They were based on a number of factors, including the following:

1. Consultation with the Small Business Administration and other Federal agencies regarding their definition of small companies,
2. Preliminary comments and suggestions from representatives of the chemical industry, and
3. An economic analysis of various alternative exemption criteria, performed by an independent contractor. Documentation of these factors is part of the public record for this rule.

The preamble to the proposed rule described all exemption criteria considered by EPA, and requested comment on several alternatives. The Agency received few public comments on the proposal, although several of the commenters were organizations representing a substantial number of chemical manufacturing firms. Most commenters approved of the proposed exemption standards; there were few objections or suggested changes. Accordingly, this final rule contains only minor changes in the content of the standards. This final rule also reflects little change in the Agency's objectives, methodology, and economic justification for the exemption standards. This preamble therefore only summarizes EPA's objectives and rationale for the rule. The preamble to the proposed rule contains a more detailed discussion of these points.

During the past year the Agency has considered limiting the scope of the small manufacturer exemption rule in order that the rule would apply only to manufacturers of substances listed on the initial or revised TSCA Chemical Substances Inventory, and not to

chemicals added to the Inventory after completing premanufacture notice review. EPA has determined, however, that this type of change in scope is not necessary to meet the Agency's information needs. The final rule therefore has the same scope as the version proposed in 1982; it is applicable to manufacturers of all chemical substances, regardless of when the substances were listed on the Inventory. EPA's reasons for suggesting and then rejecting this change are set forth in Unit IV of this preamble.

II. Scope and Content of the Final Rule

The final rule contains two exemption standards. These standards will be applicable to chemical manufacturers (including importers), but not to chemical processors. At present, EPA will continue to develop exemption standards for small processors on a rule-by-rule basis. All data in this preamble represent the manufacturing portion of the chemical industry.

The exemption standards in this final rule will apply to all manufacturers of chemical substances subject to TSCA section 8(a) reporting and recordkeeping rules, unless the Agency specifically provides otherwise in a particular section 8(a) rule. A manufacturer of these chemical substances will qualify as "small" if it meets either of the exemption standards set forth below:

1. *First standard.* A chemical manufacturer will qualify as "small" under this standard if the total annual sales revenue of all plant sites that it owns or controls (or which are owned or controlled by its foreign or domestic parent company, if any) is less than \$40 million. However, if a manufacturer with total annual sales of less than \$40 million produces (annually) over 45,400 kilograms (100,000 pounds) of a particular subject chemical at a particular plant site, that manufacturer will not qualify as small with regard to that chemical at that plant site.

Under this first standard, a company that meets the sales criterion for small but does not meet volume criterion for all of its sites will be subject only to reporting or recordkeeping for sites producing 45,400 kilograms or more of the chemical per year.

2. *Second standard.* A chemical manufacturer will qualify as small if the total annual sales revenue of all plant sites that it owns or controls (or that are owned or controlled by its foreign or domestic parent company, if any) is less than \$4 million, regardless of the quantity of chemicals produced by that firm.

For purposes of these two standards, total annual sales means the total

revenue generated by the sale of all products, including non-chemical products, that are produced at all sites owned or controlled by the manufacturer and its parent company, if any. EPA will periodically adjust, as necessary, the sales values of both standards to allow for inflation after the promulgation of this rule. The Agency will use an index from the Bureau of Labor Statistics (BLS) for this purpose: the Producer Price Index for Chemicals and Allied Products.

EPA recognizes the possibility that the sales values may also be subject to deflationary economic trends. The Agency would adjust the sales values downward if significant deflation were to occur. However, the likelihood of deflation in amounts significant enough to trigger adjustment of the sales values is extremely small. For purposes of convenience, then, this rule will refer to the mechanism for adjusting the sales values as an inflation index.

Companies will use the corporate fiscal year as the 12-month period for which both annual sales and production volume are to be calculated. In the first standard, annual production volume means the total amount of a chemical substance produced or imported during the designated 12-month period.

A parent manufacturing company is one which owns or controls another company. Ownership or control exists when a parent company owns 50 percent or more of another company's voting stock or other equity rights, or has the power to control the management and policies of the other company. This definition is drawn from the 1977 Economic Census Report of Organization of the United States Department of Commerce.

Plant site means a contiguous property unit which serves as the location for chemical manufacturing. There may be more than one manufacturing plant located on a particular site.

III. Agency Objectives

Industry compliance with TSCA reporting and recordkeeping requirements involves the expenditure of time, money, and personnel resources. These costs have particular impact on companies which have limited financial and personnel resources. Such manufacturers tend to have fewer administrative personnel and less capability for data compilation and recordkeeping than do larger firms.

In spite of the potential burden imposed on small manufacturers by reporting rules, some commenters opposed the establishment of any exemption based on company size.

These commenters stated the Agency's information needs may be greater when smaller companies are involved, because small firms may be less able to maintain proper precautions for pollution and exposure control. Without expressing any views on the merits of this claim, EPA's response is that the establishment of a small manufacturer definition is not a discretionary action. Section 8(a) requires the establishment of a small business exemption; in enacting TSCA, Congress recognized a need "to protect small manufacturers from unreasonably burdensome reporting requirements" (Conf. Rep. No. 94-1679, 94th Cong., 2d Sess. 80 (1976)).

However, in establishing a small manufacturer exemption, EPA does not intend to ignore its information gathering responsibility. The information collection authority of TSCA section 8(a) reflects congressional recognition of EPA's need for sufficient data from the chemical industry. Congress acknowledged that EPA needs sufficient data to accurately assess the risk potential of individual chemicals. Based on this congressional intent, the Agency has concluded that it is inappropriate to exempt a company from section 8(a) reporting requirements if the firm produces a subject chemical in substantial quantities. High volume chemical production reflects a greater potential for environmental release. Production data therefore would be valuable to EPA as a measure of chemical exposure risk.

The Agency has structured the exemption standards to balance the need for risk-related information with the need to minimize the reporting and recordkeeping burden on small manufacturers. While each standard contains a measure of a company's available resources, the first standard also contains a criterion which measures chemical production volume and thereby reflects EPA's information needs.

EPA also has the authority to change the general exemption standards contained in this rule in appropriate cases when Agency access to necessary information is blocked by the exemption. The Agency therefore will be able to gain access to information on the production activities of the smallest manufacturers, if necessary for effective risk assessment. However, when changing the general exemption standards for a specific rule, EPA must follow full notice and comment rulemaking procedures with regard to the amended standards.

EPA has an additional objective for the general exemption standards. The

standards should not prevent section 8(a) rules from providing information representative of firms of different sizes. Large and small firms have varying amounts of capital available, and therefore may utilize different production processes, techniques, and equipment. Different methods of production may cause the potential for chemical exposure to vary among large and small firms. It is important for the Agency to be able to monitor these differences. In order to ensure that EPA will receive representative section 8(c) data, the parameters of the exemption standards have been structured to allow the Agency to obtain production, use, and exposure data from some small firms.

A final requirement for the standards is that they be easily analyzed and applied by both industry and the Agency. EPA has selected exemption criteria that represent readily available data. These data enable identification of companies which would be likely to qualify for an exemption. The standards can also be easily enforced, because the selected criteria will enable EPA to monitor compliance with the exemption.

IV. Possible Change in the Scope of the Rule

As noted in Unit I.B., above, during the time since this rule was proposed the Agency has considered and rejected a reduction in the scope of the general exemption standards contained in the proposed rule. This decision is based on recent EPA evaluation of the relative impact of the exemption standards set forth in this rule on the Agency's ability to gather section 8(a) data from manufacturers of different types of chemicals.

EPA considered making the standards applicable only to manufacturers of chemical substances which were reported for the initial TSCA Inventory or the revised Inventory, and not to manufacturers of chemicals that are new or have been subject to premanufacture notification. The Agency thought that the general exemption standards could possibly hinder EPA's ability to gather production data on new or recently commercialized chemicals, and thus make it difficult for the Agency to monitor the activities of relatively small firms that produce such chemicals. In view of this concern, the EPA considered developing separate, more stringent exemption standards for small manufacturers of new or recently commercialized chemicals.

However, after reviewing this option the Agency determined that a single set of exemption standards will not prevent the Agency from meeting its information

needs with section 8(a) rules, regardless of the type of chemicals involved. The economic data supporting this decision are contained in the public record for this rule. EPA therefore is promulgating this rule as it was proposed, with general exemption standards applicable to manufacturers of all chemical substances, old and new.

V. The Exemption Standards

EPA is establishing general exemption standards that will be applicable to all future section 8(a) rules, with limited exceptions. Industry representatives have expressed their preference for exemption criteria that are easily understood and predictable from rule to rule. Commenters on the proposed rule approved of EPA's plan to establish a set of general standards that will clearly indicate the exemption status of individual companies, and thereby provide predictability to those companies for their long range planning. General exemption standards also will decrease administrative costs to EPA by enabling the Agency to avoid establishing new standards for each rule.

This rule contains two baseline exemption standards, the first of which contains two parameters, or criteria for exemption. The second standard consists of a single exemption criterion.

A. Structure of the First Standard

The structure of the two-parameter exemption standard remains unchanged from the proposed rule. The parameters are total annual plant site production volume per chemical and total annual company sales (the latter including total sales of the parent company or subsidiary(ies), if any). Manufacturers are required to meet both parameters in order to qualify for an exemption from reporting requirements under this standard.

Plant site production volume is an "information" parameter that makes the first exemption standard sensitive to chemical exposure potential. Industry representatives have expressed their recognition of EPA's need for information under TSCA section 8(a), and production volume enables the exemption standard to reflect those information needs. The Agency did consider a number of other parameters during the development of the proposed rule, including: total annual company profit, total company assets, total annual company sales, annual chemical sales, total number of company employees, and market share per chemical. Of all parameters considered by EPA, production volume was judged to best approximate exposure potential.

The Agency's rationale in selecting this information parameter is set forth in greater detail in the preamble to the proposed rule.

EPA has also included a total annual sales criterion in the first exemption standard as a "resource" parameter. This additional parameter ensures that the standard will be an accurate indicator of the financial resources available to a manufacturer for compliance with reporting and recordkeeping requirements.

EPA's economic analysis indicated that an exemption standard containing production volume and total sales parameters, with manufacturers required to meet both parameters in order to qualify for an exemption from reporting requirements, will best enable EPA to meet its objectives for the small manufacturer exemption. The Agency would not receive sufficient information for its regulatory purposes from a reporting rule containing an exemption standard with a single "resource" criterion, because a rule with such a standard would not be sensitive to the exposure potential of some high production volume plant sites. The value of the "resource" parameter would have to be set low enough for EPA to obtain an adequate amount of plant site data, thereby preventing some relatively small firms from qualifying for an exemption. However, a two-parameter standard will ensure that future section 8(a) rules will provide EPA with sufficient information on the chemicals subject to those rules, while targeting the exemption toward firms with the fewest available resources.

A majority of the commenters on the proposed rule approved of the structure and criteria of the two-parameter standard. Although EPA specifically requested comment on the possible use of employee number as a measure of company size, only one comment on employee number was received; that commenter advised against using employee number in the first exemption standard. Nevertheless, several commenters did object to the exemption parameters chosen by EPA for the first standard, stating that production volume and total sales criteria are inadequate measures of chemical exposure potential and a company's available resources. The only alternative parameters suggested in the public comments were total annual chemical sales and market share per chemical.

EPA maintains that neither chemical sales nor market share is an adequate substitute for the chosen parameters. A parameter that measures only chemical sales would not reflect a diversified

firm's full financial capabilities, because chemical sales may be only a small part of the total revenue a company receives from sale of all products. Thus, a chemical sales criterion would not always be an accurate measure of a firm's ability to handle a reporting burden.

In addition, chemical sales revenue is not regularly reported as a separate line item in a company's financial statements unless chemical sales are a major part of a firm's business. For many companies, chemical sales are not the primary product line. These companies and EPA may have considerable difficulty in determining the amount of total annual chemical sales. A total sales parameter is therefore preferable as a "resource" parameter, in terms of both accuracy and practicality.

Market share is also an impractical exemption criterion, for two reasons. First, market share is a less accurate "information" parameter than production volume. Market share is a relative measure of exposure potential, rather than an absolute measure. It is possible that a firm with a large share of a small market for a particular chemical may present less potential for exposure than a firm with a small share of the total industry production of a large volume chemical. There is less potential for such inaccuracy with the production volume parameter.

EPA has also concluded that market share is often difficult to determine and, as an exemption criterion, would be difficult for EPA to enforce. While many firms may be able to calculate their share of the market for their products, it is unlikely that all chemical manufacturers will be able to do so. Furthermore, EPA and individual chemical firms may not have access to the proprietary data needed to judge market share accurately.

B. Parameter Values in the First Standard

In selecting parameter values, EPA has defined "small" in terms of company resources and Agency information needs.

EPA recognizes that general exemption standards by their very nature are likely to prevent the Agency from obtaining information on some chemicals subject to section 8(a) rules; certain subject chemicals may be produced solely by manufacturers that qualify as small firms, thereby preventing the Agency from receiving any reports on those chemicals. Although EPA intends to exempt as many small manufacturers as possible from future reporting requirements, the

Agency also has sought to limit the number of zero-report chemicals by establishing a ceiling for the range of acceptable parameter values—a level beyond which the amount of information lost becomes too great for effective risk assessment.

EPA has determined that the maximum acceptable percentage of zero-report chemicals is 10 percent, and has assigned values to the exemption parameters which will cause the Agency to lose information on no more than 10 percent of all chemicals subject to future section 8(a) rules. (In specific cases involving section 8(a) rules for chemicals for which no reports will be received, EPA will have to determine whether its information needs warrant a rule-specific change in the exemption standards.) EPA's rationale in making this determination of allowable information loss is described in greater detail in the preamble of the proposed rule (47 FR 27209), and remains unchanged here. Although EPA specifically requested public comment on this point, the Agency did not receive any adverse comments.

The exemption standards in this rule also will maximize the number of individual manufacturing plant sites (locations) reporting under the exemption standards, in order to monitor the different production processes and techniques utilized by different sized firms.

Commenters on the proposed rule did not express any objection to the value assigned to the production volume parameter: 45,400 kilograms (100,000 pounds) per chemical per plant site. This amount of production represents a cut-off point beyond which EPA regards exposure potential (and Agency information needs) as significant.

The major point of concern among commenters was the \$30 million value assigned to the total sales parameters of the first exemption standard. Several commenters stated that this proposed value should be increased in the final rule, in order that the parameter reflect the effects of inflation since 1980, the year of the Proposed Rule Related Notice for the exemption rule. These commenters stated that, because of inflation, the \$30 million figure now represents a smaller chemical firm than it did in 1980. The sales parameter is therefore too low to identify accurately the type of small firm that EPA seeks to exempt. The commenters suggested that a sales parameter value of \$40 million would reflect the impact of inflation on both sales revenue and reporting costs.

EPA also recognizes that inflation will have an ongoing impact on the ability of the sales parameter to accurately reflect

a company's financial resources. The Agency therefore has changed the value of the total annual sales parameter in the final rule to \$40 million. This adjusted sales figure will more accurately reflect a small manufacturer's current ability to comply with reporting requirements.

EPA calculated the \$40 million figure using the BLS Producer Price Index for Chemicals and Allied Products. This Index was mentioned in the preamble to the proposed rule. Commenters on the proposal generally agreed that this Index accurately measures the impact of inflation within the chemical industry. The Index reflects a cumulative inflationary increase of approximately 30 percent during the past three years. Thus, \$30 million in 1979 dollars translates to an approximate value of \$40 million in 1983.

C. The Second Exemption Standard

The final small manufacturer exemption contains a second standard that is independent of the first, but that also utilizes a total annual sales criterion. The purpose of this standard is to ensure that there will be no reporting burden on the manufacturers with the smallest available financial and personnel resources. The value assigned to this standard in the final rule is \$4 million, \$1 million more than was originally proposed. As with the first exemption standard, this adjustment was made to account for inflation, using the BLS Producer Price Index.

D. Combined Impact of the Two Exemption Standards

In proposing the small manufacturer exemption standards, EPA used an economic support analysis, contained in the public record, to demonstrate the probable impact of the sales figures contained in the standards. Agency analysts have since reviewed the existing economic data, and have determined that adjustment of the sales criteria for inflation will not significantly alter the anticipated impact of the exemption standards.

Thus, the two standards together will exempt approximately 36 percent of all chemical manufacturing firms subject to section 8(a) rules. The two standards will exempt approximately 12 percent of the total number of manufacturing sites from reporting and recordkeeping requirements. The total reporting and recordkeeping cost to the chemical industry will be reduced by approximately 15 percent.

The final exemption standards will enable EPA to achieve its purpose of defining "small" within the constraints

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of Agency information requirements. In addition to the fact that 100 percent of all firms with less than \$4 million in sales will be exempt, the economic analysis indicates that the standards will also exempt over 62 percent of firms with less than \$40 million in sales. The analysis further indicates that the impact of the exemption will be concentrated among smaller firms.

With regard to the potential information loss, the Agency can expect to lose information on approximately 10 percent of all existing chemicals that are subject to future section 8(a) reporting requirements. These zero-report chemicals would be concentrated primarily in the low- and mid-production volume range. As previously described, this projected amount of information loss represents the maximum amount that the Agency has determined it can afford to lose and still be capable of effective chemical risk assessment.

In cases where the Agency believes that the exemption standards will prevent it from obtaining adequate information on chemicals of particular concern, EPA may use rulemaking procedures to change the standards to obtain more data. Such changes would be applicable to individual rules only and would be subject to public comment. They are not expected to be necessary on a regular basis.

EPA has also determined that the general exemption standards will reduce by approximately 15 percent the total number of chemical reports that the Agency would have received had there been no exemption. The overall percentage of reports lost will probably be somewhat less than 15 percent, because in certain cases the Agency may change the exemption standards to obtain more data on particular chemicals.

Two commenters claimed that the exemption standards did not contain criteria that would be sensitive to the varying risks posed by chemicals with different levels of toxicity. In developing the standards contained in this rule, EPA found it difficult to identify a single set of quantitative exemption criteria that would reflect chemical toxicity. The Agency therefore chose the more easily measured criteria of total annual sales and plant site production volume. However, despite the use of these non-toxicity criteria, EPA anticipates that section 8(a) reporting rules will provide sufficient information for effective risk assessment. As noted above, EPA has structured the exemption standards to minimize the Agency's information loss. EPA expects to receive adequate information for risk assessment purposes, including health and

environmental effects data, from larger firms and plant sites that do not qualify for the exemption. Moreover, the Agency can change the general exemption standards, by rule, if its information needs warrant such action.

EPA therefore has concluded that it need not create exemption standards that are sensitive to toxicity risk, as long as EPA is able to use section 8(a) rules to obtain the data it needs for effective risk assessment; the current exemption standards would not adversely affect the Agency's chemical assessment activities.

E. Indexing the Sales Values

Several commenters suggested that the rule be amended to include an automatic annual inflation adjustment for both sales criteria. An automatic adjustment provision would ensure that the sales criteria will continue to reflect the current desired impact of the exemption, despite changing economic conditions.

An adjustment of the sales value may not be necessary on an annual basis, particularly if no new section 8(a) rules are promulgated during a given year or the rate of inflation is relatively low. In addition, each automatic adjustment would require preparation of a *Federal Register* notice, which in turn would require an annual expenditure of Agency resources. By maintaining discretionary authority to adjust the sales figures for inflation as necessary, whenever a new reporting rule (with exemption) is promulgated, EPA will minimize the additional administrative burden while ensuring that the exemption standards continue to reflect current economic conditions.

Thus, in the final rule the Agency retains discretionary authority to adjust the sales figures, as necessary, to account for inflation. Adjustments will be made only when a new reporting rule is being promulgated and a significant amount of inflation has occurred since the most recent previous adjustment of the exemption values. In view of the effects of inflation since 1980, EPA will regard a 20 percent or greater increase in the BLS Producer Price Index as a "significant" inflationary increase.

VI. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the

courthouse," EPA is promulgating this rule for purposes of judicial review two weeks after publication in the *Federal Register*, as reflected in the "DATES" Unit of this notice. The effective date of this rule has, in turn, been calculated from the promulgation date.

VII. Rulemaking Record

The documents listed below constitute the administrative record for this rule (docket number OPTS-80011C). All documents, including the index to this public record, are available to the public in the OPTS Reading Room, 8:00 a.m. to 4:00 p.m. weekdays, except legal holidays (Rm. E-107, 401 M St., SW., Washington, D.C. 20460). This record includes basic information considered by the Agency in developing the final rule. The record includes the following categories of information, which are more specifically described in the TSCA Small Manufacturer Exemption Rule Index to the Public Record:

1. The Proposed Rule-Related Notice (45 FR 66180 (October 6, 1980)).
 2. Written comments received in response to the Proposed Rule-Related Notice.
 3. The Proposed Rule (47 FR 27206 (June 23, 1982)).
 4. Written comments received in response to the Proposed Rule.
 5. Minutes of all meetings between EPA personnel and persons outside the Agency pertaining to the development of this rule.
 6. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule.
 7. Inter- and intra-agency memoranda and communications which are specifically noted in the index of the record for this rule.
 8. The independent contractor analysis of the TSCA section 8(a) small manufacturer exemption, plus any other economic data generated in support of this rule.
 9. Any comments received from the Office of Management and Budget during its review of the rule regarding compliance with the Paperwork Reduction Act or Executive Order 12291.
- EPA requests that, between the date of this notice and the effective date of this rule, persons identify any perceived errors or omissions in the record.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the

requirements of a Regulatory Impact Analysis. This regulation is not a Major rule.

This final rule contains exemption standards and is intended to reduce regulatory compliance costs to certain small chemical manufacturers under future rules. EPA will analyze the impact of the reporting and recordkeeping rules that contain these standards as each of those rules is proposed. The exemption standards by their nature will not adversely affect employment, productivity, investment, or innovation, and will not have a significant adverse effect on competition.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

EPA has developed this final rule in accordance with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Act requires the Administrator to establish efficient, flexible regulatory procedures which have a minimal economic impact on small businesses. While imposing no direct economic burden on small businesses, this rule will reduce the impact of TSCA section 8(a) reporting and recordkeeping rules on small chemical manufacturers by clearly identifying chemical manufacturers who qualify for a section 8(a) exemption.

This preamble and its underlying analysis should be viewed in combination as a Regulatory Flexibility Analysis within the meaning of the Regulatory Flexibility Act. The preamble contains a discussion of the legal basis, purpose, and content of this rule. The preamble also contains a discussion of relevant issues and comments received, as well as a summary of the projected impact of the exemption standards. The economic analysis performed by EPA's independent contractor compared the impacts of various alternative exemption standards considered by EPA. That analysis is contained in the public record for this rule.

As required by the Regulatory Flexibility Act, EPA has solicited and evaluated the comments and suggestions of all interested persons. These comments are contained in the public record for this rule. EPA has also received comments on this rule from the Chief Counsel for Advocacy of the Small Business Administration, as required by section 8(a)(3)(B) of TSCA.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, authorizes the

Director of the Office of Management and Budget to review certain information requests by Federal agencies. The small manufacturer exemption standards, while associated with the information collection requirements of TSCA section 8(a), do not themselves require the submission of information. The final rule is therefore not subject to the requirements of the Paperwork Reduction Act. It will, however, accomplish the objectives of the Act. The exemption will reduce the regulatory burden on certain small businesses to a minimum level which is consistent with Agency information needs.

(Sec. 8(a)(3)(B), Pub. L. 94-469, 90 Stat. 2027, (15 U.S.C. 2607(a)(3)(B)))

List of Subjects in 40 CFR Part 704

Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: November 8, 1984.

William D. Ruckelshaus,
Administrator.

PART 704—[AMENDED]

Therefore, Part 704 of Chapter I of 40 CFR is amended as follows:

1. In § 704.3, by adding paragraphs (a), (d), (k) through (m), (o), and (q) through (s) to read as follows:

§ 704.3 Definitions.

(a) "Annual" means the corporate fiscal year.

(d) "Domestic" means within the geographic boundaries of the 50 United States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

(k) "Manufacturer" means a person who imports, produces, or manufactures a chemical substance. A person who extracts a component chemical substance from a previously existing chemical substance or a complex combination of substances is a manufacturer of that component chemical substance.

(l) "Own or control" means ownership of 50 percent or more of a company's voting stock or other equity rights, or the power to control the management and policies of that company. A company may own or control one or more plant sites. A company may be owned or

controlled by a foreign or domestic parent company.

(m) "Parent company" is a company that owns or controls another company.

(o) "Production volume" means the quantity of a chemical substance which is produced by a manufacturer, as measured in kilograms or pounds.

(q) "Site" means a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. There may be more than one plant on a single site.

(r) "Small manufacturer" means a manufacturer (or importer) that meets either of the standards set forth below. Small manufacturers should read the introductory paragraph of § 704.5 and paragraph (d) of § 704.5 to obtain complete information on the TSCA section 8(a) small manufacturer exemption.

(1) *First standard.* A manufacturer of a chemical substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$40 million. However, if the annual production volume of a particular chemical substance at any individual site owned or controlled by the manufacturer is greater than 45,400 kilograms (100,000 pounds), the manufacturer shall not qualify as small for purposes of reporting on the production of that chemical substance at that site, unless the manufacturer qualifies as small under paragraph (r)(2) of this section.

(2) *Second standard.* A manufacturer of a chemical substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$4 million, regardless of the quantity of chemicals produced by that manufacturer.

(3) *Inflation index.* EPA shall make use of the Producer Price Index for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor Statistics, for purposes of determining the need to adjust the total annual sales values and for determining new sales values when adjustments are made. EPA may adjust the total annual sales values whenever the Agency deems it necessary to do so, provided that the Producer Price Index for Chemicals and Allied Products has changed more than 20 percent since either the most recent previous change in sales values or the date of promulgation of this rule, whichever is later. EPA shall provide Federal Register notification when changing the total annual sales values.

(s) "Total annual sales" means the total annual revenue (in dollars) generated by the sale of all products of a company. Total annual sales must include the total annual sales revenue of all sites owned or controlled by that company, and the total annual sales revenue of that company's foreign or domestic parent company, if any.

2. By revising the introductory text and adding paragraph (d) to § 704.5 of Subpart A to read as follows:

§ 704.5 Exemptions.

Persons described in this section are exempt from all rules promulgated under the authority of section 8(a) after December 31, 1984, unless otherwise provided by rule; this provision is superseded by section 8(a) rules containing specific exemptions that differ from those described in this section. Manufacturers who are subject to reporting requirements in Part 704 of 40 CFR should examine those requirements to determine whether the exemptions contained in this section apply. Additionally, paragraph (d) of this section contains a specific exception to the small manufacturer exemption standards.

(d) *Persons who are small manufacturers of certain chemical substances.* Persons who qualify as small manufacturers as defined in paragraph (r) of § 704.3. Notwithstanding this exemption, the Administrator may, for any rule promulgated under section 8(a), require reporting or recordkeeping from any small manufacturer of a chemical substance that is subject to a rule proposed or promulgated under TSCA section 4, 5(b)(4), or 6, or is subject to an order in effect under TSCA section 5(e), or is the subject of relief that has been granted under a civil action brought under TSCA section 5 or 7.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 441

Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program

Correction

In FR Doc. 84-28545 beginning on page 43654 in the issue of Wednesday,

October 31, 1984, make the following corrections:

1. On page 43654, second column, fifteen lines above "II. Proposed Rule", "or" should have read "of".

2. On page 43660, second column, in the first "Response", third line, "to" should have read "and". Also, in the eleventh line, insert the word "are" before the word "for".

3. On page 43663, second column, last paragraph, third line, "to" should have read "too".

4. On the same page, third column, in the second "Response", three lines from the bottom, "described" should have read "describe".

5. On page 43664, first column, eight lines from the bottom, "necessary" should have read "necessity".

§ 441.56 [Corrected]

6. On page 43666, in § 441.56(b)(1), second column, 12th line, "relative" should have read "relating".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[Docket No. 21006; FCC 84-516]

Adding Frequency Channeling Requirements and Restrictions and Requiring Monitoring for Signal Leakage From Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In finalizing a long outstanding proceeding, the Commission has amended its rules to prevent cable television signal interference to aeronautical communication and navigation radio systems. Before cable television systems can operate on frequencies allocated for aeronautical radio, they must meet frequency offset, monitoring and cumulative signal leakage requirements. This will ensure the safety of life while allowing maximum possible use of broadband cable systems.

DATE: Effective December 17, 1984.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, (202) 632-9660, and Freda Lippert Thyden, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76
Cable television.

Second Report and Order

In the matter of amendment of Part 76 of the Commission's Rules to Add Frequency Channeling Requirements and Restrictions and to Require Monitoring for Signal Leakage From Cable Television Systems (Docket No. 21006).

Adopted: October 26, 1984.

Released: November 9, 1984.

By the Commission.

Introduction

1. We have before us the *Further Notice of Proposed Rulemaking*, 76 F.C.C. 2d 311 (1980), in this proceeding proposing revision of Commission Rules (§§ 76.610-76.613) adopted in the first *Report and Order*, 65 F.C.C. 2d 813 (1977), in this docket. These regulations were enacted to ensure that cable television (CATV) systems not cause harmful interference to the operation of aeronautical and marine radio services and yet allow maximum possible use of broadband cable systems.

2. Cable TV systems are not generally considered to be sources of interference to over-the-air radio services because their signals are conveyed within a closed cable. However, interference can occur if signal leakage of sufficient magnitude occurs due to poor construction of, or damage to, a system's coaxial cables. In the beginning of the cable television industry's development, cable systems used only VHF television frequencies that could be received directly by conventional television receivers (54-72 MHz, 76-88 MHz and 174-216 MHz). When cable operators foresaw the need for additional channel capacity, they began to operate on frequencies generally referred to as "midband" (108-174 MHz) and "superband" (216 to 400 MHz). These frequencies are used over-the-air by other radio services including aeronautical, marine, and emergency radio services. Excessive radiation leakage from cable systems operating on frequencies in the "midband" and "superband" can cause interference to over-the-air radio communications on frequencies in these safety and emergency services.¹

Background

3. On July 27, 1977, the Commission adopted the first *Report and Order*, providing an interim solution to cable usage of aeronautical radio frequencies. It prohibited use of any frequency within 100 kilohertz (kHz) of emergency

¹ The frequency bands at issue in this proceeding which are allocated for aeronautical use are 108-136 MHz, and 225-400 MHz, as well as the aeronautical and marine emergency frequencies 121.5 MHz, 156.8 MHz, and 243 MHz.